

## PATENT COOPERATION TREATY

## PCT

## INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

REC'D 23 FEB 2005

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Applicant's or agent's file reference P005170-PCT	<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416)	
International application No. PCT/BR 03/00147	International filing date (day/month/year) 15.10.2003	Priority date (day/month/year) 15.10.2002
International Patent Classification (IPC) or both national classification and IPC A61K7/027		
Applicant NATURA COSMETICOS S.A. et al.		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 6 sheets, including this cover sheet.  
  
☐ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of sheets.

3. This report contains indications relating to the following items:
  - I ☒ Basis of the opinion
  - II ☐ Priority
  - III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
  - IV ☐ Lack of unity of invention
  - V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
  - VI ☐ Certain documents cited
  - VII ☐ Certain defects in the international application
  - VIII ☐ Certain observations on the international application

Date of submission of the demand  17.05.2004	Date of completion of this report  22.02.2005
Name and mailing address of the international preliminary examining authority:   European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer  Diebold, A  Telephone No. +49 89 2399-8442  

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT**

International application No. **PCT/BR 03/00147**

**I. Basis of the report**

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

**Description, Pages**

1-14 as originally filed

**Claims, Numbers**

1-7 as originally filed

**Drawings, Sheets**

1/9-9/9 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item:

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).  
☐ the language of publication of the international application (under Rule 48.3(b)).  
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.  
☐ filed together with the international application in computer readable form.  
☐ furnished subsequently to this Authority in written form.  
☐ furnished subsequently to this Authority in computer readable form.  
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.  
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:  
☐ the claims, Nos.:  
☐ the drawings, sheets:

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT**

International application No. **PCT/BR 03/00147**

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

*(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)*

6. Additional observations, if necessary:

**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Yes: Claims	
	No: Claims	1-7
Inventive step (IS)	Yes: Claims	
	No: Claims	1-7
Industrial applicability (IA)	Yes: Claims	1-7
	No: Claims	

2. Citations and explanations

**see separate sheet**

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT - SEPARATE SHEET**

International application No. PCT/BR 03/00147

**Item V:**

**Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement.**

- 1) Reference is made to the following documents D1-D9:

D1 = GB-A-2 167 662  
D2 = US-A-5,053,079  
D3 = US -A-5,684,178  
D4 = XP-002268647  
D5 = XP-002266416  
D6 = US-B-6,258,346  
D7 = EP-A-1 044 677  
D8 = XP-002268436  
D9 = EP-A-1 147 761

**Novelty (Article 33(1)(2) PCT):**

- 2) The subject-matter of present independent claim 1, a solid composition, suitable for cosmetic use, containing one saturated straight-chain polymer and a glyceride, is anticipated by the compositions disclosed in the documents D1, D2, D3, D6 and D7, the reasons being as follows:
- 2.1) D1 (example 4) discloses spherical implants, i.e. solid compositions (page 1, lines 5-9), comprising microporous HDPE, i.e. a linear polyethylene, and glycerol behenate, which as a commercial mixture of mono-, di- and tri-esters of glycerol and behenic acid, is a glyceride as defined in the present application (page 3, lines 4-5). Although a cosmetic use of these implants is not described, they are physiologically safe, and therefore suitable for a cosmetic use (PCT Guidelines C-IV, 7.6).
- 2.2) D2 (claim 1, examples 13-15) discloses solid compositions which are used as inks in the molten state. These inks contain linear polyethylene and glyceryl tribehenate. The other components are cosmetically acceptable, so that D2 is relevant for novelty (PCT Guidelines C-IV, 7.6). As an absence of waxes is not explicitly stated in the present claim 1, the presence of waxes in the disclosed compositions of D2 is not a differentiating feature between D2 and present claim 1.

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT - SEPARATE SHEET**

International application No. PCT/BR 03/00147

- 2.3) D3 (the compositions of examples 2, 4 and 5) discloses lipsticks containing a polyethylene wax (Polywax 500, marketed by the company Bareco), sesame oil and 2-ethylhexyl glyceryl behenate. As Polywax 500 is known to be a crystalline polyethylene (see D4), it is assumed that it is a linear polymer. Sesame oil is known to be a mixture of glycerides (see D5). As already discussed for D2, the presence of waxes in the compositions of D3 is not a differentiating feature between D3 and present claim 1 either. Therefore, the lipsticks disclosed in D3 anticipate the subject-matter of present claim 1.
- 2.4) D6 (examples 1-5 and 7, Table 6) discloses cosmetic sticks containing dimethicone, a linear siloxane polymer, and glycerides such as tribehenin and/or C<sub>18-36</sub> acid triglycerides. A linear siloxane polymer falls under the definition of saturated straight-chain polymer given in present claim 1. The sticks disclosed in D6 therefore anticipate the subject-matter of present claim 1.
- 2.5) D7 (examples 4 and 5) discloses lipsticks containing polyethylene wax (Performalene 500) and tri(decyl 2-tetradecanoate)glyceride. It is known that the polymers marketed under the Performalene trademark are linear polyethylenes (see D8). The disclosed lipsticks also contain silicone compounds. But as the use of silicone compounds is not excluded from the subject-matter of present claim 1, these lipsticks disclosed in D7 take away the novelty of present claim 1.
- 3) The technical features of the present dependent claims 2 to 7 are also disclosed in the above-mentioned documents D1-D3 (a molecular weight of 500 can be considered as been approximately of 400 as recited in present claim 3), D6 and D7.

**Inventive step (Article 33(1)(3) PCT):**

- 4) The subject-matter of present independent claim 1 does not involve an inventive step over D9 in the sense of Article 33(3) PCT, the reasons being as follows:

The objective of the present application is to provide a solid cosmetic composition which spreads smoothly on application (page 1, lines 29-32).

The document D9 is regarded as being the closest prior art to the subject-matter of present claim 1, and discloses (examples 1-22) lipstick compositions comprising polyethylene wax and one or more glycerides chosen from glyceryl diisostearate, diglyceryl triisostearate, glyceryl tri-2-ethylhexanoate, glyceryl trioctanoate, glyceryl

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT - SEPARATE SHEET**

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International application No. PCT/BR 03/00147

tri(hydrogenated rosin/isostearate), castor oil (see D5), from which the subject-matter of present claim 1 differs in that the structuring polymer is precisely chosen of linear type.

It does not seem at present that this difference is linked to a technical effect in terms of spreadability, because the lipsticks of D9 (§1) exhibit a superior spreadability. The objective problem underlying the present application may therefore be regarded as providing an alternative to the lipsticks known from the prior art.

It requires no inventive skill to formulate lipsticks with superior spreadability according to D9 by using commercial products found under "polyethylene wax" in the CTFA, e.g. Performalene which are known (see D8) to be linear polyethylenes. The selection of linear polyethylenes appears to be arbitrary, so that an inventive step cannot be acknowledged to the subject-matter of present claim 1.

- 5) The documents D3, D6 and D7 relate to the same technical field as the present application, and are therefore relevant for an inventive step discussion.
- 6) The present claims 1-7 meet the requirement under Article 33(4) PCT, because the present invention is industrially applicable in the field of cosmetic.